TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 29

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED MARCH 10, 1924

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(29,460)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 15, 1924

[fol. 1] **IN COURT OF CLAIMS**

No. 33239

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On April 26, 1916, the plaintiff filed its original petition.

On October 11, 1917, by leave of court, the plaintiff filed an amendment to the petition.

Subsequently, to wit, on January 9, 1922, by leave of court, Plaintiff filed an amended and supplemental petition. Said petition is as follows:

II. AMENDED AND SUPPLEMENTAL PETITION—Filed January 9, 1922

Petitioner files this, its amended and supplemental petition, to take the place of its original petition filed on April 26, 1916, and an amendment thereto filed on October 11, 1917, and says:

I

Petitioner is a corporation organized under the laws of the State of Kentucky, owning and operating a system of railroads in the States of Kentucky, Indiana, Illinois, Virginia, Tennessee, Georgia, Alabama, Florida, Mississippi and Louisiana. One of the petitioner's lines traverses the State of Alabama from north to south and extends thence, crossing the State of Mississippi and a part of the State of Louisiana, to the city of New Orleans. In Alabama it passes through Birmingham, Decatur and Flomaton, inland points north of the city of Mobile, and through Mobile itself, which is, and at the times [fol. 2] of the events hereinafter stated was, a port both for export and for coastwise traffic, and in Mississippi it passes through the towns of Pascagoula and Gulfport. At Flomaton it connects with another of petitioner's lines, which extends thence to River Junction, in the State of Florida, passing, in Florida, through the city of Pensacola, which also is, and was, a port both for export and for coastwise traffic. From Decatur to Flomaton said north-and-south line was built with aid of public lands granted by Congress to divers predecessors in title to petitioner, but no other part of said line received such aid. Said line from Flomaton to River Junction was built throughout with aid of such grants.

II

After said lines of railroad were built, but before any of the events mentioned hereinafter, the industry of coal mining began to be

developed in the northern part of the State of Alabama, and petitioner has endeavored to aid the expansion of said industry. To facilitate the export of coal from Mobile and Pensacola it built switching tracks, extending from its said lines, to wharves at which there were hoists and other apparatus for the loading of coal into ships; such tracks not being used in any traffic of any kind which passed through said cities on petitioner's said lines. No aid of any kind was received from the United States in the building of said switching tracks or said wharves or said hoisting apparatus. Said wharves and hoisting apparatus were, and are, operated at Pensacola by petitioner, but at Mobile by a separate corporation.

Such coals, when exported from Alabama and sold in foreign markets, or when shipped to and sold in Texas or Florida markets, competed with coals mined and shipped from other regions, and, in order to enable the sellers of the Alabama coals to meet such competi- [fol. 3] tion successfully, petitioner has allowed and does allow them, on the transportation to Mobile or Pensacola, special rates so low as to afford petitioner very small margins of profit. A tariff for general coal traffic was issued by petitioner, becoming effective on January 30, 1912, being entitled "L. & N. R. R. Tariff, G. F. O. No. 1791; I. C. C. No. A-12137," and supplements to the same, numbered 42, 44, 45, 46, 47, 49, 50 and 51, were afterward issued, becoming effective on February 7, 1915, April 13, 1915, April 15, 1915, May 4, 1915, May 29, 1915, June 6, 1915, June 16, 1915, and July 8, 1915, respectively. By said tariff, so supplemented, rates were stated from some points to Mobile or Pensacola on export coal and coal "for movement to Galveston and other Texas points accessible by water or to Tampa, Punta Gorda and other Florida points accessible by water."

Said tariff and supplements contained other special provisions, with respect to spotting and hoisting charges and other matters, applying to shipments originating on other railroad lines than petitioner's and from which therefore petitioner did not receive the entire earnings.

Said tariff and said supplements thereto were all filed with and approved by the Interstate Commerce Commission.

III

In the month of March and latter months of the year 1915, and in 1916 and 1917, numerous shipments of coal, as shown by bills of particulars filed in this case, were made to Mobile and Pensacola over petitioner's said lines. The shipments were made from Birmingham or points near thereto on branch lines of petitioner which were equivalent thereto for the purposes of the rates stated in said tariff, or still other points on lines of other owners connecting there with petitioner's said main line, all of said points of shipment being [fol. 4] in what is named, by commercial and railroad usage, the "Birmingham District." All of such shipments passed through Flomaton. None of such coals were for export or for reshipment by water or otherwise to any Texas or Florida points and none were for sale in any markets. In one case the coals were for the use of a

ship of the United States navy. The other coals all were for uses of the Corps of Engineers of the United States army in river or harbor improvements at or near to Mobile or Pensacola or at or near to Pascagoula and Gulfport, in Mississippi, or Fort Morgan, in Alabama, to which latter points transportation from Mobile was by Government barges. In all of said shipments the cars were switched and spotted and the coal hoisted at said ports upon the tracks and by the apparatus hereinbefore described. The rates applicable by said tariff and said supplements between said points of shipment and Mobile or Pensacola ranged from $1.00 to $1.15 per ton on coal to be exported or to be reshipped for commercial uses to said Texas or Florida points and $1.10 to $1.25 per ton on coals shipped for other uses.

IV

Said coal supplies for re-shipment to Pascagoula, Gulfport or Fort Morgan and some of said supplies for final delivery at Mobile were obtained by a contract of date March 15, 1915, between the district officer of the United States Corps of Engineers in charge at Mobile, and the Gulf States Coal Company. The others of said supplies for delivery at Mobile were obtained by a contract between said officer and the Imperial Coal Company of date August 21, 1916. Said companies were producers of coal in said "Birmingham District." The coals shipped to Pensacola were purchased under in- [fol. 5] formal offers of other miners of coal in said district, or coal dealers in Pensacola, one purchase being made by the Paymaster of the United States naval vessel Tonopah and all the others by the district officer of said Corps of Engineers in charge, whose office was at Montgomery, in the State of Alabama. Said two formal contracts and said informal purchases of said district engineer at Montgomery were all subject to specifications prescribed by the War Department which provided that the sellers should have charge of and responsibility for the coals until the same should reach the destinations named, and there should load them into barges of said engineer corps by which they were to be transported to points of actual use; that laboratory tests and analysis of each shipment of coal should be made and at destination each shipment should be visually inspected by an officer of said corps, and that any coals which did not satisfy the requirements of the specifications, or which such inspecting officers for any reason did not approve, would not be accepted and should be removed by or at the cost of the sellers from the premises of the United States at the destinations. With respect to said purchase for the steamship Tonopah like requirements were made by an invitation upon which said accepted offer was based. The two formal contracts, for deliveries at Mobile, also contained similar provisions.

V

Regarding all of said supplies of coal invitations for bids were issued by said officers of the United States and it was pointed out therein that there would be a large saving to the United States, in cases of shipment over land-aided lines of railroad, if the coals were

purchased at points of shipment, and bidders were directed to submit [fol. 6] prices in the alternative for delivery (1) at points of shipment and (2) at destinations. In the bids submitted the prices for delivery at destinations exceeded the prices for delivery at points of shipment by approximately the amounts of the freight rates. In said contracts of the Gulf States Coal Company delivery at Mobile was stipulated and the price was fixed at the price named therefor. In the contract of the Imperial Coal Company and in said informal offers the propositions and prices accepted were for delivery on board cars at points of shipment. Upon all of the shipments, whether under said formal contracts or said informal offers, the freight charges were paid by the United States and were computed upon the basis of said land-grant from Decatur to Flomaton or to Pensacola. Thus, although the United States had no property in and was not concerned in any way with the coals while in transit, it, in violation of petitioner's rights and of the terms of the land-grants as fixed by the adjudications, profited to the amounts of the land-grant abatements appurtenant to said railroad mileage.

VI

In all of said shipments inspection in fact was made by United States officers at Mobile or Pensacola and samples were taken which were subjected to laboratory tests at Birmingham or at Washington City, and the coals were not accepted until they had been so inspected and the results of such tests were known.

VII

All of the shipments were made on bills of lading, made up by the consignors, on a form prepared by officers of the United States, which, by regulations of departments of the Government, was to be [fol. 7] used exclusively in shipments of Government property, and therefore was known in railway offices as "Government bill of lading." The blank bills of lading had been furnished to the consignors by the officers of the United States having authority over the transportation. The complete bills of lading were receipted, or "accomplished," by Government officers at the points of delivery.

VIII

Petitioner's officers who received said freights for shipment and those who made claim upon disbursing officers of the United States for payment with respect thereto had no information or suggestion regarding the ownership of the coals, when the same were shipped or when they made their bills, except what was conveyed by said use of Government bills of lading. Assuming that said coals, while in course of transportation, already belonged to the United States, petitioner's accounting officers in preparing their bills made deductions with respect to the land-grant to petitioner's lines from Birmingham to Flomaton or to Pensacola. Said bills were computed, on all deliveries at Mobile, whether for use at that point or at Pascagoula or

Gulfport or Fort Morgan, and on all deliveries at Pensacola, on the basis of full tariff rates. The net rates resulting from the land-grant deductions were all far below $1.00 per ton; and therefore in said bills petitioner's officers made charges of 10 cents per ton for said switching and spotting of cars.

IX

Settlement on said bills was made by the Auditors for the War or Navy Departments, and they disallowed, and refused to pay to petitioner, the amounts stated for spotting and shipping charges; and on [fol. 8] appeal their said action was approved by the Comptroller of the Treasury. Petitioner accepted payment of such reduced amounts and made protest against the same, reserving its claim to additional compensation.

X

In each of said shipments to Mobile a part of the coals were for use at that point and another part, or other parts, were to be forwarded to and used at or near to Pascagoula, Gulfport or Fort Morgan. In a proper case the land-grant deduction on shipments from such points to Mobile is 36.99 per cent of the gross rate, leaving, out of $1.10 per ton, a net rate of 69.3 cents, and, out of $1.00 per ton, a net rate of 63.01 cents per ton; and on shipments to Pensacola the deduction and the net rate each is 50 per cent of the gross rate, so that there was payable, net, out of $1.10 per ton, a net rate of 55 cents per ton. In petitioner's said bills, with respect to all of said shipments to Mobile, whether for use there or at said other points, land-grant allowances were stated, calculated by the uniform application of said net rate of 69.3 cent-, and with respect to the shipments to Pensacola, by making a deduction of 55 cents, there was applied said equal net rate of 55 cents. In the computations by the Auditor for the War Department a gross rate of $1.10 was applied on the part-shipments for use at Mobile and on the part-shipments to Pascagoula, Gulfport or Fort Morgan a gross rate of $1.00 was applied, and so necessarily a separate calculation for the land-grant was made on the several parts of those shipments.

XI

The total of the land-grant deductions made by the Auditor for the War Department on the shipments to Mobile for use at other [fol. 9] points, as shown by paragraph X was $5,107.49 and the rate of such deductions being 36.99 per cent, the gross compensation (100 per cent) out of which the deductions were made, computed, as stated at $1.00 per ton, was $13,807.76, and at the rate of $1.10 per ton the amount is $1,380.78 more.

XII

The amounts of the land-grants reductions involved in said payments made to petitioner, described in paragraph IX hereinbefore,

are: under the Gulf States Coal Company contract, $5,119.63; under the Imperial Coal Company contract, $5,566.02; on engineer shipments to Pensacola, $1,778.13; on navy shipments to Pensacola, $150.30. The amount of the reduction made by change of rate, described in paragraph X hereinbefore, is $1,380.78; making a total of reductions of $13,994.86. The aggregate amounts of the spotting and hoisting charges deducted, as narrated in paragraph VIII hereinbefore, is $5,620.70.

Petitioner says all of said coals were the property, while in transit on petitioner's railroad lines, of the shippers thereof and not of the United States, and therefore they were not lawful subjects of land-grant reductions from the rates of petitioner's said tariff, and petitioner therefore claims of the United States the sum of said reductions, to wit, $12,614.08, plus said sum of $1,380.78, withheld from it by the application of a wrong gross rate. But if said coals while in transit were the property of the United States and said land-grant reductions were truly due with respect thereto and the net revenue accruing to petitioner from said shipments was less than $1.00 per ton, then claimant says it should have and recover of the United [fol. 10] States the sum of said spotting and hoisting charges, to wit, $5,620.70, plus said $1,380.79.

The Louisville and Nashville Railroad Company, by Benj. Carter, Its Attorney in Fact.

Jurat showing the foregoing was duly sworn to by Benj. Carter omitted in printing.

[fol. 11] III. General Traverse

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

IV. Argument and Submission of Case

On March 20, 1922, this case was argued and submitted by Mr. Benjamin Carter, for the plaintiff, and Mr. Perry W. Howard, for the defendant.

[fol. 12] **Findings of Fact, Conclusion of Law, Memorandum by the Court, and Appendices A, B, C, D.**—Filed May 1, 1922

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact

I

The plaintiff is, and was during the different transactions hereinafter set out in these findings, a corporation duly incorporated under

the laws of the State of Kentucky, owning and operating a system of railroads in the States of Kentucky, Indiana, Illinois, Virginia, Tennessee, Georgia, Alabama, Florida, Mississippi, and Louisiana. One of the plaintiff's lines traverses the State of Alabama from its northern boundary south through Decatur and Birmingham to Flomation, Ala., thence, still south, through western Florida, to Pensacola, a port of export and coastwise traffic on the Gulf of Mexico, thence in an easterly direction to River Junction, Fla. This line was constructed from Decatur, Ala., to River Junction, Fla., by the aid of public lands granted by the United States. (Acts of May 17, 1856, June 3, 1856, and March 3, 1857 (11 Stat. 15, 17, 200); April 10, 1869, and March 3, 1871 (16 Stat. 45, 580); March 3, 1875 (18 Stat. 509). From Flomaton to Mobile, Ala., also a port of export and coastwise traffic on the Gulf of Mexico, another line of plaintiff's system runs in a southwesterly direction, and was built without Government aid.

II

After development of coal mining began in northern Alabama, in order to facilitate the exportation of coal from Mobile and Pensacola, the plaintiff, without assistance from the Government, constructed wharves with hoists thereon for loading coal on vessels and barges, and switches from its main lines to said wharves. The wharves and hoists at Pensacola were operated by plaintiff and at Mobile by the Mobile Coal Co.

[fol. 13]

III

During the years 1915, 1916, and 1917, when the coal in question was transported over plaintiff's lines via Birmingham and Flomaton to Mobile, Ala., and Pensacola, Fla., the following published tariff rates filed with the Interstate Commerce Commission were in force: Louisville & Nashville G. F. O. 1791; I. C. C. 12137, effective January 30, 1912.

[In cents per ton of 2,000 pounds.]

		From groups—		
		1	2	3
Mobile, Ala. Pensacola, Fla.				
Coal for bunkerage and purposes other than export	L. & N. R. R.	110	110	115

The above tariff was modified by Supplement No. 42, note 4-B, effective February 7, 1915, the material parts of which read: "Coal for bunker use and for coastwise and export movement at or via Mobile, Ala., and Pensacola, Fla."

(c) On coal paying the Louisville & Nashville Railroad to Mobile, Ala., and Pensacola, Fla., a road haul revenue of $1 per ton of 2,000 pounds or more, the cost of transferring the coal from cars onto barges or into vessels through the hoist of the Mobile Coal Co. (Mobile, Ala.), and Louisville & Nashville Railroad Co. (Pensa-

cola, Fla.), will be assumed by the Louisville & Nashville Railroad Co.

(d) On coal paying the Louisville & Nashville Railroad to Mobile, Ala., and Pensacola, Fla., a road-haul revenue of less than $1 per ton of 2,000 pounds, the cost of transferring coal from cars onto barges or into vessels will be 10 cents per ton of 2,000 pounds, plus $2 per car switching, or spotting, charge in addition to the freight rate, subject, however, to a maximum total charge of $1 per ton of 2,000 pounds, including transportation and hoisting and switching (or spotting) service.

The coal hereinafter described as transported over plaintiff's lines to Mobile and Pensacola came from mines near Birmingham, which were scheduled in plaintiff's tariffs as in Groups 1 and 2, and if not for export or coastwise traffic was charged for at the rate of $1.10 per ton of 2,000 pounds.

IV

On March 15, 1915, the Gulf States Coal Co. entered into a contract with the United States, through Lieutenant Colonel Keller of the United States Engineers Corps, to furnish and have delivered, when requested, 18,000 short tons of coal from the Dixiana mines onto United States barges, or in bunkers, in carload lots, from hoists at Mobile, Ala., at $1.38 per short ton, the United States to pay the freight thereon and the contractor to transfer the coal at its expense to the barges. The specifications provided for inspec- [fol. 14] tion of the coal, either when it was loaded on the cars or when it was unloaded therefrom. A copy of the contract is attached to these findings as Appendix A and is made part of this finding by reference thereto.

V

The coal under the above contract was shipped over plaintiff's lines to Mobile on Government bills of lading, which were accomplished, the coal inspected and accepted at that place, and none of it appears to have been rejected. Part of the coal was delivered for Government engineering work at or near Mobile, and part was switched to wharves of the Mobile Coal Co. and loaded from its hoists onto Government barges, which were towed by Government tugs to Fort Morgan, Ala., Pascagoula, Miss., and Gulfport, Miss., places on the Gulf coast west of Mobile, where it was to be used for Government engineering work near those places. The transportation of the coal to be used at Mobile was paid for by the Government at the basic rate of $1.10 per short ton, and that to be used near Fort Morgan, Pascagoula, and Gulfport at the basic rate of $1 per short ton, with land grant deductions therefrom.

The plaintiff rendered its bills to the Government, for auditor's settlement, on the approved form of voucher for transportation, land grant involved, upon which it stated the basic rate and the amount to be deducted on account of land grant and claimed the net amount remaining after the deduction of land grant. In no case did it claim payment upon other than a land-grant basis, but it

included in its bills and claimed switching, or spotting, and hoisting charges.

The land-grant deductions for coal to be used at Mobile amounted to $2,941.80, and for coal to be used at the other points to $2,177.83, or a total of $5,119.63, and the hoisting charges $1,317.10, and the switching charges $550, or a total of $1,867.10.

The auditor disallowed the switching and hoisting charges, but otherwise allowed the claims as filed except that on two shipments on bills of lading numbered 24451 and 24452 the auditor determined the basic rate to be $1 per ton instead of $1.10 per ton, as claimed, and corrected the land grant accordingly.

VI

The plaintiff company protested the disallowance of the switching and hoisting charges in settlements made by the auditor, except as to settlements set out in finding XIII as to which no protests of any kind were made, and protested also the application of the $1 per ton basic rate instead of the $1.10 per ton rate on bills of lading 24451 and 24452, and as to the disallowances in the auditor's settlement covering these two bills of lading the plaintiff applied to the Comptroller of the Treasury for a revision of the settlement.

The plaintiff claimed that it was entitled to the switching and hoisting charges because the road haul revenue after the deduction of land grant was less than $1 per ton, and upon the other point, that the $1.10 basic rate was applicable to these shipments under the provision of the tariff.

[fol. 15] The comptroller affirmed the action of the auditor, holding that under supplement to former tariff the $1 rate was the proper rate on shipments to the points involved and that plaintiffs were not entitled to switching and hoisting charges on the ground claimed because charges for Government transportation are based upon commercial rates from which land-grant deductions follow by operation of law.

VII

On August 21, 1916, the Imperial Coal & Coke Co. entered into a contract with the United States through Major Schulz, of the United States Engineer Corps, by which it agreed to deliver on the railroad cars at its mines at Dixiana, Ala., approximately 12,000 tons of coal at $1.50 per ton of 2,000 pounds. The specifications provided for adding the land-grant freight rate from the mines to Mobile to the price bid for mine delivery for comparison of bids, and that the coal should be inspected when loaded on cars or unloaded therefrom, and the contract provided that the coal should be subject to rejection until final inspection and acceptance. This contract is attached to these findings as Appendix B and is made part of this finding by reference thereto.

VIII

The coal under the second contract was also shipped on Government bills of lading over plaintiff's lines to Mobile, the bills of lading

accomplished, and the coal inspected and accepted at that place by the proper Government officials, and none of it appears to have been rejected. Part of this coal was also delivered for use on Government engineering work at or near Mobile, and part was switched to the wharves and loaded on Government barges and towed by Government tugs to Fort Morgan, Ala., Pascagoula and Gulfport, Miss., for use on engineering work near those places. The freight on the coal for use at Mobile was paid for at the rate of $1.10 per short ton, and that for use at the other places mentioned at $1 per short ton.

The plaintiff in stating its bills made land-grant deductions and claimed the net amount after making such deductions, as it had done in its claims for shipments made under the Gulf States Coal Co. contract, and also claimed switching and hoisting charges which latter were disallowed by the auditor, but the bills were otherwise allowed and paid as rendered.

The percentage of land-grant deductions from the total gross commercial charges amounted to 38 per cent, and on a freight rate of $1 per ton the plaintiff received 62 cents net per ton, and on $1.10 per ton it received 68.2 cents net per ton under both contracts.

The land-grant deductions under this contract for coal to be used at Mobile amounted to $2,636.36, and for coal to be used at the other places to $2,929.66, or a total of $5,566.02, and the hoisting charges to $1,448 and the switching charges to $642, or a total of $2,090.

IX

The total land-grant deductions for coal to be used at Mobile under both contracts amounted to $5,578.16; the total land-grant deductions for coal to be used at Fort Morgan, Pascagoula, and Gulfport [fol. 16] under both contracts amounted to $5,107.49; and the total hoisting and switching charges for coal shipped to Fort Morgan, Pascagoula, and Gulfport amounted to $2,951.10.

The difference between the payments of freight on coal shipped to Fort Morgan, Pascagoula, and Gulfport and that shipped to Mobile was 10 cents per ton, or a total of $510.75.

X

There was purchased on advertisements, specifications, bids, and acceptances in the Birmingham district 7,540 tons of coal of 2,240 pounds, as follows: November 2, 1914, 2,000 tons of Old Pratt coal, from the Tennessee Coal, Iron & Railroad Co., of Birmingham, at $1.80 per ton, to be shipped on Government bills of lading via routes to be shown thereon; on October 20, 1915, 5,000 long tons of Old Pratt coal from the same company, at $1.75 per ton, to be shipped on Government bills to 10 probable points, the first named being Pensacola, Fla.; on May 24, 1917, from Cary & Co., of Pensacola, 40 long tons of Old Belle Ellen coal, at $4.50 per ton, to be shipped on Government bills of lading to the engineer officer at Pensacola for testing; on September 10, 1917, from Cary & Co., 500 tons of Old Belle Ellen coal, at $3.14 per ton, to be shipped on Government bills of lading to the engineer officer at Pensacola.

The form of advertisements and the proposals and acceptances are attached to these findings as Appendix C and are made a part of this finding by reference thereto. The specifications are the same as those in Appendix A.

XI

Part of the coal purchased as above, without a formal contract, was shipped to Pensacola on plaintiff's lines during the years 1916 and 1917, on Government bills of lading, which were duly accomplished, and the coal inspected and accepted at Pensacola by the proper Government officials. The said coal was for use at or near Pensacola, and was paid for at the rate of $1.10 per ton. The land-grant deductions on said coal amounted to $1,773.23, the hoisting charge amounted to $350.30, and the switching charges to $164, or total switching and hoisting charges of $514.30. The percentage of land-grant deductions from total gross commercial charges amounted to 48 per cent and the net revenue to the plaintiff was 62 cents net per ton.

XII

On April 8, 1915, the assistant paymaster on the U. S. S. *Tonopah*, at the naval station, Pensacola, sent an invitation to bid and a blank proposal to the Zimmern Coal Co., of Pensacola, to furnish 250 long tons of coal to be delivered alongside of said vessel at Pensacola on April 20, 1915, free of charge, subject to the usual inspection and test. The Zimmern Co.'s bid was $3.50 per long ton, or if Government bills of lading should be furnished, $2.36 per long ton, the coal to come from the Imperial Coal & Coke Co.'s mines at Dixiana, Ala. The bid of the Zimmern Coal Co. at $2.36 per long ton was accepted and Government bills of lading were furnished for the shipment of the coal involved.

[fol. 17] The coal was transported on plaintiff's lines and the land-grant deductions made were $153.30 (the amount claimed in the petition is $150.30); the hoisting charges were $29.79, and the switching charges $16, or a total of $45.79. The invitation to bid and the proposal as filled out are attached to these findings as Appendix D, and are made part of this finding by reference thereto.

XIII

The pjlaintiff did not in any respect protest against settlements for transporting coal to Mobile under the contract with the Gulf States Coal Co. on bills of lading numbered 24471, 24472, 24474, 24476, 24477, 24478, 24480, 24484, 24483, 24481, 24487, 24488, 24485, 24491, 24494, and 26761, in which the land-grant deductions amounted to $2,921.80, the hoisting charges to $747.71, and the switching charges to $320; nor against settlement for transporting coal to Mobile under the contract with the Imperial Coal & Coke Co. on Government bills of lading numbered 26752, 26754, 26758, and 26762, in which the land-grant deductions amounted to $290.72, the hoisting charges, $70.99, and switching charges, $34; nor against settlement for transporting coal to Pensacola on Government bills

of lading numbered 29358 and 29384, in which land-grant deductions amounted to $223.80 and hoisting charges to $44.76 and switching charges to $20.

The total land-grant deductions, against which no protests were made, amounted to $3,435.78, and the total charges for hoisting and switching, against which no protests were made, amounted to $1,237.46, and the total land-grant deductions, hoisting and switching charges, against which no protests were made, amounted to $4,673.24.

In all cases other than those above referred to in which there were no protests, the plaintiff's protests were limited to the disallowances of switching and hoisting charges and the adoption of the $1 basic rate instead of the claimed $1.10 rate as to the shipments covered by bills of lading numbered 24451 and 24452.

XIV

The regulations of the Treasury Department in force at the time the coal in question was hauled provided that Government bills of lading were to be issued for the transportation of Government property only. That prepayment of charges in no case was to be demanded by the carrier, nor collected from the consignee. That presentation to the officer indicated on the face of the bill of lading, when properly accomplished, and attached to the freight voucher prepared on the authorized Government form, payment was to be made to the last carrier, unless otherwise specifically stipulated. That when shipments were made under contract or special rates notation of such fact should appear on the face of the bill of lading. That shipments were required to be made at the restricted or limited valuation specified in the tariff or classification at or under which the lowest rate was available, unless otherwise indicated on the face of the bill of lading.

[fol. 18]

XV

There is no evidence in the record as to plaintiff's knowledge of the terms of any or all of the contracts or orders here involved or proving or tending to prove that it was deceived, misled, or mistaken as to any material fact or that it did not act, in presenting its bills at land-grant rates, with full knowledge of all the facts.

CONCLUSION OF LAW

Upon the facts found the court concludes as matter of law that the plaintiff is not entitled to recover, and its petition herein ought to be and it is dismissed with judgment against plaintiff for cost of printing, to be taxed and collected by the clerk.

MEMORANDUM

All of the coal here involved was contracted for or ordered on the basis of mine delivery, except that bought under the contract with the Gulf States Coal Co., and the fact that inspection was provided for at point of delivery or some duty in relation thereto imposed upon the contractor does not require another conclusion.

The Gulf States Coal Co. contract is to be construed as for delivery at destination with obligation to the contractor on the part of the United States to pay the freight.

The fact that in rendering all its bills the plaintiff made land grant deductions and claimed only the net land grant rate, arrived at by deducting land grant from commercial rates, and accepted payment on that basis without protest precludes the right to assert a further claim for the same service in the absence of a showing of fraud or mistake of fact, as to which the record is silent. The mere use of Government bills of lading can not avail plaintiff. (B. & O. Case, 52 C. Cls. 468; Oregon-Wash. Case, 54 C. Cls. 131; affirmed, 255 U. S. 339.)

Upon the facts all shipments except those made under the Gulf States Coal Co. contract were subject to land-grant deduction. As to shipments under that contract, aside from the effect of the presentment and settlement of bills on a land grant basis as stated above, if these shipments were not subject to land-grant deductions because not Government property, there is, as between the plaintiff and the United States, no liability on the latter to pay any freight at all.

On all of these shipments the road haul revenue at commercial rates was $1 per ton or more, the condition under which the shipper was entitled to switching and hoisting without charge. The fact that proper land-grant deductions reduced the actual cash receipts for said shipments to less than $1 per ton can not deprive the United States of the same right to switching and hoisting without charge as would accrue under the tariff to a private shipper paying full commercial rates. The amounts by which the cash receipts, by reason of [fol. 19] land grant deductions, were reduced below $1 per ton had been theretofore paid by grants of lands and the "revenue" to the plaintiff was the aggregate of the cash paid and the determined value, in relation to said shipments, of the land grant. Government rates over land-aided roads are always predicated on commercial rates from which deductions follow by operation of law in return for benefits conferred, the conditions imposed by the land-grant acts and the acceptance of the grants thereunder partaking of the nature of a contract, and land-aided roads, having accepted the benefits conferred, may not by constructing or construction of tariffs deprive the United States of the benefits stipulated for as the consideration of the gratuity.

The application of the $1 per ton basic rate on shipments made on bills of lading 24451 and 24452, under the Gulf Coal Co. contract, was, so far as appears of record, correct.

[fol. 20]

APPENDIX A

Advertisement

U. S. Engineer Office,
Mobile, Ala., January 20, 1915.

Sealed proposals for furnishing about eighteen thousand (18,000) tons of bituminous coal and 9,000,000 gallons of fresh water will

be received at this office until 11 a. m., February 8, 1915, and then publicly opened. Information on application.

C. Keller, Lieut. Col., Engineers.

16. Payments.—Payments will be made monthly for coal and water delivered and accepted, in acordance with paragraphs 46, 47, and 50 of these specifications. A percentage of ten (10) per centum will be reserved from each payment until completion of the contract.

Detailed Specification

19. Place of Delivery.—With a view to permitting the United States to take advantage of the reduced freight rates which apply to shipments of Government property over the main lines of the Louisville and Nashville Railroad Company between Decatur and Flomaton, Ala.; the Alabama Great Southern and Mobile and Ohio Railroad practically from the north boundary line of the State of Alabama, through Birmingham and Tuscaloosa, Ala., via Meridian, Miss., through to Mobile; and the Southern Railway between Jacksonville, Ala., and Selma, Ala.; all of which are land-grant aided lines between the limits given, the form of proposal hereto attached contemplates either delivery of the whole quantity at the mine, from which shipment will then be made on Government bill of lading to Mobile, Pascagoula, or Gulfport, as may be necessary, or delivery of about 7,000 tons at Mobile, Ala., about 5,000 tons at Pascagoula, Miss., and about 6,000 tons at Gulfport Miss.

Method of Delivery.—The United States will select the method of delivery which under the proposals received proves to be most economical and advantageous. If mine delivery is selected, the coal will be ordered in carload lots for shipment on Government bills of lading to be furnished by the contracting officer, but the contractor will be required to transfer it from cars to barges belonging to the United States and will therefore include in his price his cost for so transferring the coal at all three points of delivery, Mobile, Pascagoula, and Gulfport. Less than carload lots can not to advantage be ordered except for immediate delivery, and the prices for such smaller lots will contemplate delivery from the local stock of the contractor on barges or in bunkers at each locality as may be [fol. 21] specified. If prices based on delivery at Mobile, Pascagoula, and Gulfport prove to be more advantageous, then these prices will be accepted and order will be given for carload lots or less as may be required on board United States barges or in bunkers at Mobile, Ala.; Pascagoula, Miss.; and Gulfport, Miss.

Bidders will state the location of their mines, and the rail routes over which shipments may be made, including particularly the name of any branch line upon which the mines may be situated and the junction points at which such branches join main lines.

Bidders will describe the equipment and location of their delivery plants on the blank proposal attached hereto.

20. Measurement.—The quantity of coal delivered in carload lots will be certified railroad weights, checked, at the option of the con-

tracting officer or whenever necessary, by barge displacement or measurement in bulk. The measurements shall be made by a representative of the United States, subject to appeal to the contracting officer, whose decision shall be final. If measured in bulk, 38.3 cubic feet will be considered equivalent to one ton of 2,000 pounds.

28. Service Test.—At the option of the constructing officer, a practical service test of any coal or coals offered may be made, under the supervision of the contracting officer or his representative, in the furnaces in which the coal to be purchased is to be used; and the right is expressly reserved to reject any coal which on such test may prove unsuited to the particular furnace and boiler equipment, or which from practical service experience in the past is known to be unsuited to this equipment, regardless of its calculated cost per 1,000,000 British thermal units. The interested bidder or his authorized representative may be present at such test.

If required by the contracting officer, each bidder must deliver to the United States, at Mobile, Ala., within twenty (20) days after receiving notification, a sufficient quantity of the coal he proposes to furnish, to permit a service test to be made of its qualities as a steam coal. The quantity required for this purpose will not be less than forty (40) tons, and the bidder will be paid therefor at price stated in his proposal.

Sampling.—29. Taking of Samples Imperative.—As payment for bituminous (or semibituminous) coal is based upon the quality of coal delivered as shown by analyses of representative samples, it is imperative that samples representing every order of coal be taken and the proper officials of the Government will see that such samples are obtained.

30. Contractor may be Present.—If desired by the contractor, permission will be given to him or his representative to be present and witness the collection and preparation of the samples to be forwarded to the Government laboratories.

31. When Samples will be Taken.—The coal will be sampled at the time it is being loaded or unloaded from railroad cars, ships, barges, or wagons, or when discharged from contractor's supply bins.

39. Special Moisture Sample.—In the reduction of the gross sample to the sample for transmittal to the laboratory the gross sample will unavoidably lose moisture. To determine the moisture content in the coal delivered, a separate special moisture sample must be taken. This will be accumulated by placing in a hermetically [fol. 22] sealed receptacle small parts of the freshly taken increments of the gross sample.

40. Moisture Samples Discretionary.—The collection of sepcial moisture samples will be discretionary with the Government. Special moisture samples will be taken if, in the opinion of the Government inspector, the coal contains moisture in excess of the amount guaranteed by the contractor. The special moisture samples will be taken

so as to represent the coal with respect to the moisture contained at time of weighing.

41. Extending Deliveries.—If deliveries extend over any considerable period, what would otherwise be a gross sample may be worked down in successive stages to samples of a size suitable for transmittal to the laboratory, and the samples representing the several partial deliveries may be analyzed and the several analyses averaged, or the several samples may later be mixed at the delivery point or in the laboratory and reduced to one sample and one analysis made.

Analysis.—42. Method.—Immediately on receipt of a sample in the laboratory it will be analyzed and tested by the Government in accordance with the method recommended by the American Chemical Society and by the use of a bomb calorimeter.

Causes for Rejection.—45. Unsatisfactory Fuel.—Coal containing percentages of volatile matter or sulphur higher than the standards guaranteed (par. 24) or having a moisture content in excess of that guaranteed, or containing percentages of ash greater than indicated in the column "maximum limits for ash" in the table in the section entitled "Price and payment" (par. 47), or failing to give satisfactory results because of excessive clinkering or a prohibitive amount of smoke, or proving for any other cause to be undesirable fuel, will be subject to rejection, and the Government will have the right to cause the contractor to remove such coal at no cost to the Government. Such event may result in the Government purchasing in the open market, or through competitive bidding, a sufficient quantity of coal to supply the deficiency caused by such failure, or annulling the contract by giving notice in writing to that effect to the contractor, and the Government, in its discretion, purchasing such coal in the open market or by contract by competitive proposals; the contractor to remain liable for all damages sustained by the United States on account of such failure, including the difference, if any, between the cost of purchasing and delivering said coal and the price at which the contractor agreed to furnish it. The contract price must be understood to be the adjusted price per ton based upon analysis, as hereinafter described under the section entitled "Price and payment." If it shall be impracticable to cause the contractor to remove coal subject to rejection, the Government may use such rejectable coal, subject to deductions as determined under the section entitled "Price and payment," and may in addition, as circumstances warrant in the opinion of the contracting officer, make a further deduction of not to exceed twenty-five (25) per cent of the amount of the adjusted bill, based on the tonnage of the coal under question and the adjusted price per ton; and the decision of the contracting officer as to the percentage of the adjusted price to be deducted under this provision shall be final.

Price and payment.—46. Method of Payment.—As soon as practicable after the close of each month, if requested in writing by the [fol. 23] contractor, payment will be made in the amount of 60 per cent of the invoice price for all coal delivered under the con-

tract during that month. Upon the receipt of the official report of the analysis of the deliveries during the month the proper corrections to the invoice price will be determined, in accordance with the provisions of paragraphs 45 and 47, and the balance, if any, due the contractor for the month's deliveries, less the 10 per cent retained (par. 16), will be paid to the contractor with the next monthly payment. If the results of the analysis show a balance due the United States, such balance will be deducted from the next monthly payment, or may be recovered from the contractor and his surety under the bond. Upon the termination of the contract, all retained percentages, less any deductions required by the terms of the contract, will be paid to the contractor.

47. Determination of Price.—Payment will be made upon the basis of the price named in the proposal, corrected as follows for variations in heating value, ash, and moisture from the standards specified in the contract (see par. 45 for an additional deduction on coal subject to rejection): * * *

The price will be further corrected for moisture content in excess of the amount guaranteed by the contractor, the deduction being determined by multiplying the price bid by the percentage of moisture in excess of the amount guaranteed.

49. Final Decision.—On all questions arising under these specifications the decision of the contracting officer shall be final.

Form 19

These articles of agreement entered into this 15th day of March, nineteen hundred and fifteen, between Lieut. Col. C. Keller, Corps of Engineers, United States Army, hereinafter designated as the contracting officer, representing the United States of America, of the first part, and Gulf States Coal Company, of Mobile, in the county of Mobile, State of Alabama, hereinafter designated as the contractor, of the second part, witnesseth, that the said parties do hereby covenant and agree, to and with each other, as follows:

Article 1. In conformity with the advertisement and specifications hereunto attached, which form a part of this contract, the said contractor shall furnish and have delivered on United States barges, or in bunkers, from hoists, in carload lots, at Mobile, Alabama, when requested, eighteen thousand (18,000) short tons, more or less, of Imperial washed pea coal, mined by the Imperial Coal & Coke Company at their Dixiana mines, at one dollar and thirty-eight cents ($1.38) per short ton. Coal to be shipped on Government bill of lading, to be furnished by the contracting officer, the United States to pay railroad freight charges between Dixiana and Mobile and the contractor to provide for transferring the coal from cars to United States barges and to pay all demurrage charges that may accrue.

For the same brand of coal in less than carload lots, delivered on United States boats or barges, at Mobile, Alabama, a price of $2.73 per short ton will be paid, the contractor to pay all freight and other charges.

[fol. 24] The option is, however, reserved to the United States to call upon the contractor to tow, at his own expense, from Mobile to Pascagoula and to Gulfport, Mississippi, coal upon which the United States has paid the freight charges between Dixiana and Mobile, Alabama, and which the contractor has, at his own expense, transferred from cars to United States barges. Whenever this option is exercised, the United States will pay for coal thus delivered at Pascagoula $1.76 per short ton, and for coal thus delivered at Gulfport $1.98 per short ton.

The said contractor shall also furnish and deliver, for steaming and drinking purposes, nine million (9,000,000) gallons, more or less, of fresh water, as follows:

At Mobile, Ala., 3,500,000 gallons, and at Pascagoula, Miss., 2,500,000 gallons at eight (8) cents per 1,000 gallons; and at Biloxi, Miss., for use at Gulport, Miss., 3,000,000 gallons at ten (10) cents per 1,000 gallons.

The party of the first part will pay for coal delivered in accordance with the provisions of paragraphs 46, 47, and 48 of the specifications, on the basis of the following analysis: Moisture in "delivered coal," in "dry coal," 4%; sulphur in "dry coal," 1%; British thermal "dry coal," 14,800; volatile matter in "dry coal," 30%; and delivered, the prices stated in the preceding paragraph.

ARTICLE 2. All materials furnished and work done under this contract shall be subject to a rigid inspection by an inspector appointed on the part of the United States, and such as do not conform to the specifications of this contract shall be rejected. The decision of the contracting officer as to quality and quantity shall be final.

ARTICLE 9. Until final inspection and acceptance of, and payment for, all of the material and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the contracting officer to reject any defective work or material or to require the fulfillment of any of the terms of the contract.

In witness whereof the parties aforesaid have hereunto placed their signatures the date first hereinbefore written, articles 16, 17, & 18, having been canceled with our knowledge and consent, such elimination being hereby agreed to.

Witnesses: J. A. Marques (as to) C. Keller, Lieut. Col., Corps of Engineers. Witness: J. O. Acree (as to) Gulf States Coal Co., by D. T. Buell, President.

(Executed in Triplicate.)

Approved: March 30, 1915. Dan C. Kingman, Chief of Engineers, U. S. Army.

[fol. 25] APPENDIX B

Advertisement

U. S. Engineer Office, Mobile, Ala.—Sealed proposals for furnishing about twelve thousand (12,000) tons of bituminous coal will be

received at this office until 11 a. m. July 31, 1916, and then opened. Information on application.

16. Payments.—Payments will be made monthly for coal delivered and accepted, in accordance with paragraphs 46 and 47 of these specifications. A percentage of ten (10) percentum will be reserved from each payment until completion of the contract.

19. (a) Place of Delivery.—With a view to permitting the United States to take advantage of the reduced freight rates which apply to shipments of Government property over the main lines of the Louisville and Nashville Railroad Company between Decatur and Flomaton, Ala.; the Alabama Great Southern and Mobile and Ohio Railroad practically from the north boundary line of the State of Alabama, through Birmingham and Tuscaloosa, Ala., via Meridian, Miss., through to Mobile; and the Southern Railway between Jacksonville, Ala., and Selma, Ala.; all of which are land-grant aided lines between the limits given, one option in the form of proposal hereto attached contemplates delivery of the whole quantity at the mine, from which shipment will then be made on Government bill of lading to Mobile. In case coal is transported by water from the mine to Mobile, delivery will be made on board U. S. barges in Mobile River.

(c) Method of Delivery.—Coal may be transported by water or by rail from the mines to Mobile, Ala. In order to compare bids, the land-grant freight rate from mine to Mobile will be added to the price bid for mine delivery. Bidders will state the location of their mines, and the rail routes over which shipments may be made, including particularly the name of any branch line upon which the mines may be situated and the junction points at which such branches join main lines. Bidders will describe the equipment and location of their delivery plants on the blank proposal attached hereto.

20. Measurement.—The quantity of coal delivered in carload lots will be that ascertained from corresponding certified railroad weights. If shipped by water, displacement measurements will be used, the unit weight of water used in the computation being obtained from a sample of water taken at the time of measurement.

28. Service Test.—At the option of the contracting officer, a practical service test of any coal or coals offered may be made, under the supervision of the contracting officer or his representive, in the furnaces in which the coal to be purchased is to be used; and the right is expressly reserved to reject any coal which on such test may prove unsuited to the particular furnace and boiler equipment, or which from practical service experience in the past is known to be unsuited to this equipment, regardles of its calculated cost per [fol. 26] 1,000,000 British thermal units. The interested bidder or his authorized representative may be present at such test.

If required by the contracting officer, each bidder much deliver to the United States, at Mobile, Ala., within twenty (20) days after receiving notification, a sufficient quantity of the coal he proposes to furnish, to permit a service test to be made of its qualities as a steam coal. The quantity required for this purpose will not be less

than forty (40) tons, and the bidder will be paid therefor at prices stated in his proposal.

Sampling. 29. Time of Sampling.—The coal shall be sampled when it is being loaded into or unloaded from railroad cars, ships, barges, or wagons, or when discharged from supply bins, or from industrial railway cars, or grab buckets, or from the coal-conveying equipment at the power plant, as the case may be and as may be mutually agreed upon.

38. Special Moisture Sample.—In the reduction of the gross sample to the sample for transmittal to the laboratory, the gross sample may unavoidably lose moisture. To determine the moisture content in the coal delivered a separate special moisture sample may be taken.

40. Moisture Samples Discretionary.—The collection of special moisture samples shall be discretionary with the Government. If special moisture samples are not taken, the moisture determined for the gross sample shall govern.

Causes for Rejection

* * * * * * *

Price and Payment.—46. Method of Payment.—As soon as practicable after the close of each month, if requested in writing by the contractor, payment will be made in the amount of 60 per cent of the invoice price for all coal delivered under the contract during that month. Upon the receipt of the official report of the analysis of the deliveries during the month the proper corrections to the invoice price will be determined, in accordance with the provisions of paragraphs 45 and 47, and the balance, if any, due the contractor for the month's deliveries, less the 10 per cent retained (par. 16), will be paid to the contractor with the next monthly payment. If the results of the analysis show a balance due the United States, such balance will be deducted from the next monthly payment, or may be recovered from the contractor and his surety under the bond. Upon the termination of the contract, all retained percentages, less any deductions required by the terms of the contract, will be paid to the contractor.

47. Determination of Price.—Payment will be made upon the basis of the price named in the proposal, corrected as follows for variations in heating value, ash, and moisture from the standards specified in the contract (see par. 45 for an additional deduction on coal subject to rejection):

The price will be further corrected for moisture content in excess of the amount guaranteed by the contractor, the deduction being determined by multiplying the price bid by the percentage of moisture in excess of the amount guaranteed.

49. Final Decision.—On all questions arising under these specifications the decision of the contracting officer shall be final.

[fol. 27] These articles of agreement entered into this 21st day of August, nineteen hundred and sixteen, between Major Edward H. Schulz, Corps of Engineers, United States Army, hereinafter designated as the contracting officer, representing the United States of

America, of the first part, and Imperial Coal and Coke Company, of Birmingham, in the county of Jefferson, State of Alabama, hereinafter designated as the contractor, of the second part, witnesseth, that the said parties do hereby covenant and agree, to and with each other, as follows:

Article 1. In conformity with the advertisement and specifications hereunto attached, which form a part of this contract, the said contractor shall furnish and deliver on railroad cars at its mines at Dixiana, Ala., approximately twelve thousand (12,000) short tons of Imperial washed pea coal, at one dollar and fifty cents ($1.50) per ton of 2,000 pounds.

The party of the first part will pay for coal delivered, as above stated, in accordance with the provisions of paragraphs 46, 47, and 48 of the specifications, on the basis of the following analysis:

Moisture in "delivered coal"	3%
Ash in "dry coal"	4%
Sulphur in "dry coal"	1%
Volatile matter in "dry coal"	32%
British thermal units per pound of "dry coal"	14,800

As provided in paragraph 22 of the specification, about 5% of the total amount to be furnished under this contract must be Imperial washed nut coal, the price to be one dollar and fifty cents ($1.50) per ton of 2,000 pounds on the basis of the above analysis for Imperial washed pea coal.

Article 2. All materials furnished and work done under this contract shall be subject to a rigid inspection by an inspector appointed on the part of the United States and such as do not conform to the specifications of this contract shall be rejected. The decision of the contracting officer as to quality and quantity shall be final.

Article 9. Until final inspection and acceptance of, and payment for, all of the material and work herein provided for, no prior inspection, payment, or act is to be construed as a waiver of the right of the contracting officer to reject any defective work or material or to require the fulfillment of any of the terms of the contract.

In witness whereof the parties aforesaid have hereunto placed their signatures the date first hereinbefore written, article 16 and 17 having been canceled with our knowledge and consent, such elimination being hereby agreed to.

Witnesses: W. A. Carney (as to) Edward H. Schulz, Major, Corps of Engineers, U. S. A. Imperial Coal & Coke Company, by H. Hammond, Treasurer. Witness: as to Imperial Coal & Coke Co., M. L. Ford, P. H. Neal.

Approved September 13, 1916. W. M. Black, Chief of Engineers, U. S. Army.

[fol. 28]

APPENDIX C

U. S. Engineer Office, Montgomery, Ala.

Sealed proposals in duplicate to supply all the articles mentioned below will be received until 12 m., August 30, 1917, when they will

be publicly opened. The envelope must be marked "Proposal for coal."

Bidders will insert the prices at which they will furnish and deliver the following stores f. o. b. at Pensacola, Fla., including cost of package and cost and risk of transportation.

Each article must be good and merchantable in kind, quality, and condition, subject to inspection before acceptance, which will be determined only on receipt of the United States agent, to whom the articles are consigned. No payment or responsibility for rejected articles. The right is reserved to reject any or all bids, or to accept the lowest bid for the article which in the opinion of the district officer is the best and most suitable for the purpose intended.

The right is reserved to increase or diminish the quantities 20 per cent.

Notice will be given only when an offer is accepted.

This proposal must be made out in full, signed and returned to this office.

C. L. Sturdevant, Captain, Corps of Engineers, U. S. A.

Note.—Prices to be f. o. b. at your mines, shipments to be made on Govt. B/Ls to be furnished by this office.

U. S. Engineer Office, Montgomery, Ala., Nov. 2, 1914.

Tennessee Coal, Iron & Railroad Company, B'ham, Ala.

In accordance with your proposition, as per sealed proposal opened 10-27-1914, please deliver the following articles on Govt. B/L, furnished by this office:

About 2,000 tons, 2,240# each, more or less, as needed, Old Pratt screened coal, per ton of 2,240#.....$1.80 per ton.

Coal to be shipped in lots of one or more cars each, and traced until they reach destination.

Coal must be free from dirt, slate, &c., & must be clean.

R. R. weight to govern, and payments will be made monthly for such coal as has been delivered and accepted.

Coal not up to analyses will be rejected.

Coal must be shipped without delay after receipt of Govt. B/L, via routes shown thereon.

For Earl I. Brown, Major Corps of Engineers, U. S. A., by G. C. Scherer, Chief Clerk.

[fol. 29] War Department, United States Engineer Office, Montgomery, Ala., May 24, 1917.

Cary & Company, Pensacola, Fla.

SIR: Referring to your bid for coal opened in this office on May 23, 1917, I am enclosing herewith order for one car of coal of approximately 40 tons, to be shipped to Pensacola, Fla., consigned to J. E. Turtle, asst. engr. Government bill of lading is inclosed herewith to cover this shipment.

This car is ordered under the terms of the specifications and is

to be used as a sample to determine the fitness of your coal. Of course, you will be paid the price bid f. o. b. mines, namely, $4.50.

Very respectfully,

C. L. Sturdevant, Captain, Corps of Engineers.

Cary & Co. (Incorporated), Pensacola, Fla., May 25th, 1917.

Capt. C. L. Sturdevant, Corps of Engineers, Montgomery, Ala.

SIR: We are in receipt of your communication of the 24th inst., and as advised we have requested the mines to ship one car of coal, approximately 40 tons, to Capt. J. E. Turtle, U. S. assist. engineer, on Government bill lading.

The price of $4.50 per ton at the mines is in order.

Respectfully,

Cary & Company, by R. M. Cary, President.

A true copy:

W. A. Johnson, Major Corps of Engineers, U. S. A.

U. S. Engineer Office, Montgomery, Ala., October 20th, 1915.

Tennessee Coal, Iron & R. R. Co., Birmingham, Ala.:

In accordance with your proposition, as per sealed proposal opened May 28, 1915, please deliver the following articles, f. o. b. your mines (Edgewater, B'ham. Dist., Ala.):

5,000 tons of 2,240# each, R/M steam coal, more or less.

To be shipped in lots of one or more cars each.

To be shipped on U. S. Govt. B/L. furnished by this office.

Shipments to be traced until they reach destination.

Probable points of shipment:

Pensacola, Fla.	Columbus, Ga.
Panama City, Fla.	Rome, Ga.
Apalachicola, Fla.	Montgomery, Ala.
Bainbridge, Ga.	Mobile, Ala.
Selma, Ala.	Riverside, Ala.

And to other such points as is desired.

Coal must be clean, free from dirt, slate, etc.

[fol. 30] R. R. weights govern and payments will be made monthly for such coal as has been delivered and accepted.

Coal not up to analysis will be rejected.

Coal to be furnished: "Old Pratt" screened steam coal, at $1.75 per ton of 2,240#.

Coal must be shipped without delay after receipt of Govt. B/L. via routes as shown thereon.

Guaranteed analysis:

Volatile	29.91%	Fixer carbon	61.61%
Ash	5.45%	Sulphur	1.33%
B. T. U.'s (dry coal)	14,750		

Moisture in delivered coal 2% and less.

All coal screened over 2" circular perforated screens and hand picked.

Earl I. Brown, Major Corps of Engineers, U. S. A., by G. C. Scherer, Chief Clerk.

A true copy:
W. A. Johnson, Major, Corps of Engineers, U. S. A.

[fol. 31]

Appendix D

Proposal for Supplies Afloat

U. S. S. Tonopah.
Naval Station, Pensacola, Fla., April 8, 1915.

Zimmern Coal Co., Pensacola, Fla.:

Please return this proposal, duly signed, by 10 o'clock a. m., April 10, 1915, with prices entered opposite each item named below, for delivery on board this vessel April 20, 1915, free of charge, as specified below within —— days from receipt of order, and subject to all conditions appearing on the face and back of this form.

If not prepared to submit a bid, please so state and return this proposal.

Respectfully, H. G. Bowerfind, Assistant Paymaster, U. S. Navy.

Articles required	Price of each item	Per—(State unit of quantity bid on)		Total amount of each item
250 tons coal (more or less); to be dry, of best quality, and practically free from slate, dirt, sulphur, and other impurities, and subject to usual inspection and test, and weigh 2,240 lbs. to ton.				
To be delivered alongside U. S. S. Tonopah in flat seagoing lighters at Naval Station, Pensacola, Fla.				
To show the name of mine from which furnished. Weight to be determined by a representative of the ship who will furnish a certificate to the dealer or contractor and to the commanding officer of the U. S. S. Tonopah. To be weighed in lighters and the ship's representative will see that his record agrees with that of the contractor as to total tons of 2,240 lbs. before coal is delivered alongside ship.				
Certified analysis of the coal bid on must accompany bid. When possible the analysis should be a Government report.				
Black Creek screened lump coal from The Imperial Coal & Coke Company's mines at Dixiana, Alabama.....	$3.59	Ton	2,240	$897.50
If Government bills of lading are furnished —deduct 1.23¢ per ton or.....	2.36	"		
Bidders should state shortest time in which delivery can made made.				
Aggregate amount of proposal.....	.....	.....		$897.50

This must be filled and signed by bidder without alternations.

Accepted @ $2.36 per ton of 2,240 lbs. Gov't B/L furnished.
H. G. Bowerfind, Ass't Paym. U. S. N.

The undersigned hereby agrees to furnish within five days, and in conformity with this proposal, the above-named articles at the prices quoted above. In event of failure to make satisfactory delivery within the time specified, it is hereby agreed that the order may be cancelled [fol. 32] without notice, at the option of the purchasing officer.

Zimmern's Coal Company, by John R. Vidmer, Manager, 405 Am. National Bank Bldg.

(Signature. If a corporation, its name and signature of an officer is required.)

NOTICE.—The Paymaster General directs that invitations to bid on supplies required shall not be sent to persons so long as they are in arrears in the satisfactory delivery of supplies already ordered, and that this notice shall appear upon all invitations to bid and orders for supplies.

[fol. 33] VI. JUDGMENT OF THE COURT

At a Court of Claims held in the City of Washington on the First day of May, A. D., 1922, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the defendant, and do order, adjudge and decree that the plaintiff herein is not entitled to recover any sum in this action of and from the United States; and that the petition herein be and the same hereby is dismissed; And it is further ordered, adjudged and decreed that the United States shall have and recover of and from the plaintiff, The Louisville and Nashville Railroad Company, as aforesaid, the sum of Ninety-six Dollars and sixty-seven cents ($96.67), the cost of printing the record in this court, to be collected by the Clerk as provided by law.

By the Court.

VII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On June 5, 1922, the plaintiff filed a motion to set aside judgment and to amend findings of fact. Said motion was overruled by the Court on June 12, 1922.

On June 23, 1922, the plaintiff presented a motion for leave to file second motion to set aside judgment. On June 26, 1922, said motion, for leave to file a second motion, was allowed by the Court.

On June 27, 1922, the plaintiff filed a second motion to set aside judgment and to amend findings of fact. Said motion was overruled by the Court on December 4, 1922.

[fol. 34] VIII. Plaintiff's Application for Appeal—Filed January 29, 1923

Claimant shows to the court that this case involves more than thirteen thousand dollars ($13,000.00); that on May 1, 1922, the court filed findings of fact and rendered a judgment dismissing the petition; that on June 5, 1922, claimant filed a motion to amend said findings of fact and set aside said judgment, and on December 4, 1922, the court made an order overruling said motion. Claimant hereby prays an appeal to the United States Supreme Court from said judgment and order.

Benjamin Carter, Attorney for Claimant.

IX. Order of Court Allowing Appeal—Filed February 5, 1923

On consideration of the plaintiff's application for appeal in this cause it is ordered by the court that an appeal be and the same is allowed from the final judgment of the court in this cause.

[fol. 35] In Court of Claims

[Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, memorandum filed by the court and appendices A, B, C, D, thereto; of the judgment of the Court; of the plaintiff's application for appeal and of the order of the Court allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Eighth day of February, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of the Court of Claims.)

Endorsed on cover: File No. 29,460. Court of Claims. Term No. 29. The Louisville and Nashville Railroad Company, appellant, vs. The United States. Filed March 19th, 1923. File No. 29,460.